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Date November 2, 1993

Signature [REDACTED]

11/2/93

SEP 24 1993

Employer Identification Number: [REDACTED]

Dear Applicant:

This refers to your application for recognition of exemption from federal income tax under section 501(c)(9) of the Internal Revenue Code.

The information furnished shows that you were formed on [REDACTED], to fund severance benefits for eligible employees of [REDACTED] (hereafter [REDACTED]). The information furnished shows that eligible employees are individuals who are full-time employees who work at least [REDACTED] hours per week.

You state that [REDACTED], as of [REDACTED], had [REDACTED] employees of whom all were participating as of [REDACTED]. Your exemption application shows that [REDACTED] had [REDACTED] employees who were highly compensated. The individuals who are considered as highly compensated are (a) the business manager (\$ [REDACTED]); (b) and 5 business agents (\$ [REDACTED]). In addition, [REDACTED] has two union organizers whose salaries are in excess of \$ [REDACTED] (\$ [REDACTED] and \$ [REDACTED]). The remaining [REDACTED] employees earn less than \$ [REDACTED]. The information furnished shows that all of the employees have worked for [REDACTED] for more than [REDACTED] years.

Section 4.01 of the Plan provides for benefits to be paid "on resignation" and "for any other reason". On [REDACTED], we asked your attorneys to amend section 4.01 of the plan document to delete the word "resignation" in line two, and to add after "for any other reason", the phrase "other than voluntary retirement or resignation". By letter dated [REDACTED], your attorneys advised that you would not amend your Plan document as requested.

Section 501(c)(9) of the Code provides for the recognition of exemption of voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such

Section 1.501(c)(9)-3(a) of the Income Tax Regulations states that a Voluntary Employee Beneficiary Association is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of providing such benefits.

Section 1.501(c)(9)-3(e) of the regulations states, in part, that severance benefits (under a severance pay plan within the meaning of 29 CFR 2510.3-2(b)) are appropriate "other benefits" within the meaning of Section 1.501(c)(9)-3(a) of the regulations.

29 CFR 2510.3-2(b) provides, in pertinent part, that: "Severance pay plans....shall not be deemed to constitute an employee pension benefit plan or pension plan solely by reason of payment of severance benefits on account of the termination of an employee's service provided that: (i) Such payments are not contingent, directly or indirectly, upon the employee's retiring...." (Emphasis supplied).

Section 1.501(c)(9)-3(f) of the regulations provides examples of nonqualifying benefits, and states, in effect, that the term "other benefits" does not include any benefit that is similar to a pension or annuity benefit paid at the time of retirement. Specifically, this section of the regulations states that "[f]or purposes of section 501(c)(9)... a benefit will be considered similar to that provided under a pension [or] annuity ... plan if it provides for deferred compensation...."

Based upon the above authority, the Service has uniformly held, since the adoption of these regulations, that severance benefits that do not meet the requirement of 29 CFR 2510.3-2(b), that is, are payable upon retirement, are not qualifying "other benefits" within the meaning of section 501(c)(9) of the Code. This interpretation of the regulations has been upheld judicially. See: Canton Police Benevolent Association of Canton Ohio v. U.S., 658 F. Supp. 411 (N.D. Ohio E.D. 1987), aff'd. 844 F.2d 1231 (6th Cir. 1988) and Lima Surgical Associates Voluntary Employees' Beneficiary Ass'n Plan Trust v. United States, 20 Cl. Ct. 674, 66 A.F.T.R.2d (P-H) 5167 (1990), aff'd. 944 F.2d 885 (Fed. Cir. 1991).

Because you have declined to amend your Plan document to eliminate the word "retirement" and to otherwise provide that severance benefits will not be paid upon retirement, we conclude that you are providing a benefit which does not qualify as an appropriate "other benefit" under section 501(c)(9) of the Code. Therefore you do not qualify for recognition of exemption under section 501(c)(9) of the Code.

You are required to file federal income tax returns.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days of the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Brooklyn, New York. Thereafter, any question about your federal income status should be addressed to that office.

Sincerely yours,

[REDACTED]

Chief, Exempt Organizations
Rulings Branch 3

cc: DD, Brooklyn
Attn: EO Group

cc: [REDACTED]

[REDACTED]

[REDACTED]